

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**OCTOBER 2, 1996**

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-1535**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**CITY OF DELAVAN,**

**Plaintiff-Respondent,**

**v.**

**JEFFREY ALAN LANG,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed.*

ANDERSON, P.J. Jeffrey Alan Lang appeals from the trial court's judgment affirming the municipal court's denial of Lang's motion to suppress—unlawful stop.<sup>1</sup> Lang argues that the officer was not in possession of any particularized suspicion of criminal conduct and therefore the

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<sup>1</sup> At both the evidentiary hearing and on appeal, Lang challenged the stop and the detention for purposes of conducting the field sobriety tests. Lang does not, however, dispute his conviction for operating while under the influence of intoxicants.

investigative stop of his vehicle was unreasonable. Because we conclude that the facts available to the officer were sufficient to provide him with a reasonable suspicion of illegal activity, the judgment is affirmed.

The evidence is not disputed. An anonymous informant contacted the Walworth County Sheriff's Department, reporting "some unwanted subjects" at the Vegas Gentlemen's Club. The subjects were allegedly intoxicated and causing some type of disturbance or refusing to leave. The informant also reported that the suspect vehicle was a gray Chevy S-10 Blazer with Illinois license plate number JRT-198, traveling on Highway 11 towards Delavan.

This information was relayed to City of Delavan Police Officer James Bilskey. Bilskey then observed a gray Chevy S-10 Blazer with license plate number JXN-198 traveling on Highway 11. After following the vehicle for several blocks, Bilskey stopped the vehicle.

This information was also relayed to Sergeant Thomas Hausner of the Walworth County Sheriff's Department. As he traveled westbound on Highway 11 in the City of Delavan, he observed Bilskey with the suspect vehicle. Hausner pulled over to assist. Hausner performed field sobriety tests and eventually arrested Lang for operating a motor vehicle while intoxicated (OWI).

Lang brought a motion to suppress the evidence amassed as a result of his arrest before the City of Delavan municipal court. He contended

that Bilskey did not have a reasonable and articulable suspicion for stopping his vehicle under *Terry v. Ohio*, 392 U.S. 1 (1968), because the anonymous informant's information was not sufficiently reliable. The municipal court denied Lang's motion. The parties then entered into a stipulated trial and the municipal court found Lang guilty of OWI. He appealed the denial of the suppression motion to the circuit court, which was also denied.

On this appeal, Lang renews his argument that Bilskey did not have a reasonable suspicion to stop his vehicle. In reviewing an order regarding suppression of evidence, we will sustain the trial court's findings unless they are against the great weight and clear preponderance of the evidence. *State v. Richardson*, 156 Wis.2d 128, 137, 456 N.W.2d 830, 833 (1990). However, whether a stop meets statutory and constitutional standards is a question of law that we review without deference to the trial court. *State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

Lang contests the reliability of the anonymous information. An anonymous tip, without more, seldom justifies an investigative stop. *Alabama v. White*, 496 U.S. 325, 329 (1990). However, when the details of the anonymous informant's predictions can be verified, there is reason to believe that the caller is honest and well informed about the illegal activity. *Id.* at 331-32. The Wisconsin Supreme Court has held that when significant aspects of an anonymous tip are independently corroborated by the police, the inference arises that the informant is telling the truth and an investigatory stop is justified. *Krier*, 165 Wis.2d at 676, 478 N.W.2d at 65; see also *Richardson*, 156 Wis.2d at 142, 456 N.W.2d at 836.

Here, the anonymous informant reported the type of vehicle involved, the roadway on which the vehicle was traveling, the direction of travel and a portion of the license plate number. The facts provided by the caller were personally corroborated by Bilskey. This established that the anonymous informant's information was likely based on recent and reliable perceptions or information. This provided Bilskey with a reasonable and articulable suspicion for stopping the vehicle. See *Terry*, 392 U.S. at 27.

Moreover, Bilskey had an articulable and reasonable suspicion of *criminal* activity. Bilskey independently observed Lang's vehicle weave from approximately the center of the lane to the curb and back. When a person's activity could constitute a crime, a police officer may validly perform an investigative stop pursuant to § 968.24, STATS. Unlawful behavior may be present, or it may not. Even so, officers have the right to temporarily freeze the situation so as to investigate further. *Krier*, 165 Wis.2d at 678, 478 N.W.2d at 69. Upon viewing Lang's erratic driving, Bilskey could validly perform an investigatory stop, irrespective of the anonymous tip.

Nevertheless, Lang maintains that "the fact that the car only went near the center line to the curb once in the entire time officer Bilskey observed the vehicle shows not intoxication, but prudent driving." This certainly is not the only inference. Bilskey observed Lang's vehicle at approximately two o'clock in the morning and he only followed him through an intersection and about one block further. In that short distance, Lang weaved and then "pulled up to a stop sign." Bilskey followed for one more block and then turned on his

siren, at which point Lang pulled over, hitting the curb in the process. This hardly qualifies as “prudent” driving.

Lang further contends that “[i]t is the obligation of the police officer to learn of specific facts constituting a reasonable suspicion of an offense before he may act.” In *Krier*, we made the opposite determination. We stated, Section 968.24, STATS., explicitly allows an investigative stop based on a reasonable suspicion. That statute is operative in this case because the police had an articulable and reasonable suspicion that he was engaged in an activity that *could* be criminal. That verb is all that is required here.

*Krier*, 165 Wis.2d at 678, 478 N.W.2d at 66 (emphasis added). Because we conclude that, under the totality of the circumstances, Bilskey had a reasonable and articulable suspicion to perform the investigatory stop of Lang’s car, the statute is effective here as well.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.